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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/22/2001

Glen J. Anderson

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07/21/2006

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EXAMINER

STRANGE, AARON N

ART UNIT

PAPER NUMBER

2153

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/041,839	ANDERSON, GLEN J.	
	Examiner	Art Unit	
	Aaron Strange	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-10,12,26-34 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,4-8,10,12,26-31,34,36,39 and 40 is/are rejected.
- 7) ☐ Claim(s) 9,32,33,37 and 38 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 5/1/05 have been fully considered but they are not persuasive.

2. With regard to Applicant's assertion that Yashushi does not teach or suggest "determining an amount of time the first user remains at the second location", the Examiner respectfully disagrees. This limitation, based on the relevant portions of the specification (at least ¶33), has been interpreted as determining if the user remains at the second location for at least the threshold amount of time claimed in claim 1.

In the present case, Yashushi discloses determining if a user remains at a second location for at least a threshold amount of time (at least Col 12, Lines 41-65), since immediately changing the content would amount to a threshold of zero, which falls within the scope of "a threshold amount of time". Furthermore, the user must have been present in the room for at least some period of time in order to be detected, and thus the threshold, while small, is still "a threshold period of time". If Applicant intends for the threshold time to be longer than the threshold time of Yashushi, Applicant is encouraged to amend the claims to specify a threshold time.

However, in the interest of expedited prosecution, the Examiner would like to note that McCarthy discloses that waiting a threshold time prior to considering the profile of users who just entered a room would be an advantageous addition to the system. McCarthy discloses that a large number of users complained about the system

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switching stations in the middle of songs. (McCarthy, Col 26, Lines 46-50). It would have been advantageous to wait until a user has been at the second location until the end of the current song before considering their preferences to eliminate this problem. This is a clear suggestion to wait a threshold period of time at least the length of a song.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,4-8,10,26-31,34,36,39 and 40 rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Yasushi et al. (US 6,084,516).

5. With regard to claims 1,10, and 36, McCarthy discloses a method for providing content, comprising:

identifying a first user profile corresponding to a first user and a second user profile corresponding to a second user (each user has a profile)(Col 22, Line 61 to Col 23, Line 7), the user profiles containing at least one content characteristic for a respective user (musical preference)(Col 22, Lines 65-66);

determining first content characteristics common to at least the first user and the second user based on the first user profile and the second user profile (most preferred musical genres)(Col 23, Lines 18-27);

outputting content including the first content characteristics to the first user and the second user in a first location (play preferred station in the fitness center)(Col 23, Lines 40-52).

McCarthy fails to specifically disclose detecting movement of the first user from the first location to a second location in which said content is not being outputted, determining second content characteristics if a third user is present at the second location and a threshold time passes, or outputting the content at the second location immediately if a third user is not present.

Yasushi teaches detecting movement of a first user from a first location outputting a first content to a second location where the content is not being outputted (users move between rooms) (At least Col 10, Lines 1-15; Col 12, Lines 30-40; Col 13, Line 66 to Col 14, Line 13), determining whether a third user is present at the second location (Col 12, lines 30-48), modifying the content being outputted at the second location if a third user is present (users with plural users use common audio source) (Col 12, Lines 30-48), and continuing the first content if not user is present (rooms with one user use individual audio source) (Col 10, Lines 1-15 and Col 13, Line 66 to Col 14, Line 13). This would have been an advantageous addition to the system disclosed by McCarthy since it would have allowed different rooms such as the locker rooms and main gym area to play different songs based on the preferences of the users in each

room. As each user moved between the rooms, their preferences would be considered for the room they are in, modifying the output accordingly.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to detect movement of a user between locations, and adjust the output content when the new location already contains other users, since this would have allowed the preferences of the users to be considered for each room they are in, and ensure that mutually acceptable content is output in each location.

6. With regard to claim 4, McCarthy further discloses that the identified user profiles are at least one of: stored in a centralized database (Col 22, Line 61 to Col 23, Line 7) and received from the users (Col 22, Lines 65-66).

7. With regard to claim 5, McCarthy further discloses that the first and second content characteristics include at least one of: style of content (preferred musical genre)(Col 22, Lines 65-66), content author and content performer.

8. With regard to claim 6, McCarthy further discloses that the first and second content characteristics include at least one of: output mode of content (musical genre) (Col 3, Lines 61-67 and Col 22, Lines 65-66) and content playing device.

9. With regard to claim 7, McCarthy further discloses that the content includes at least one of: audio data (Col 22, Lines 55-57); visual data including at least one of

graphics, pictures and surface covering appearance; aroma; ambient lighting; temperature; and airflow.

10. With regard to claim 8, McCarthy further discloses establishing a time including at least one of time of day (90 minutes after member entered)(Col 24, Lines 32-39), time of week, time of month and time of year, wherein the established time is utilized in determining the first content characteristics.

11. Claims 26-31 and 34 are rejected under the same rationale as claims 1,4-8, and 10, since they recite substantially identical subject matter. Any differences between the claims do not result in patentably distinct claims and all of the limitations are taught by the above cited art.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Yasushi et al. (US 6,084,516) in further view of Sainton et al. (US 5,854,985).

13. With regard to claim 12, while the system disclosed by McCarthy and Yasushi shows substantial features of the claimed invention (discussed above), it fails to disclose generating a third user profile for the third user, wherein the user profile is generated by at least one of general demographic information of users present and based on past users encountered.

Sainton teaches generating a default user profile based on the preferences of a large number of users that have been previously encountered (Col 17, Lines 49-57). The users may then update their profile at a later time to reflect their personal preferences. This would have been an advantageous addition to the system disclosed by McCarthy since it would have given new users a default profile that corresponds substantially to the preferences of the group. Therefore, this user would not have a substantial impact on the choice of music played when he or she is present.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to generate a default user profile for a new user based on past users encountered since it would not substantially impact the choice of music by the system until the user updated their profile with their personal preferences.

14. With regard to claims 39 and 40, Yasushi further discloses establishing at least one of an orientation or a position of the first user within the second location, wherein said at least one of the orientation or the position is utilized in determining the second content characteristics (Col 4, Line 59 to Col 5, Line 14).

Allowable Subject Matter

15. Claims 9,32,33,37, and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AS
7/11/2006



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